



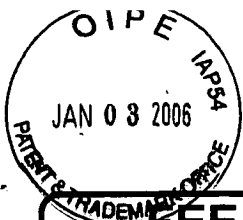
AF/Zlw

TRANSMITTAL FORM (to be used for all correspondence after initial filing)		Application No.	10/820,574
		Filing Date	April 7, 2004
		First Named Inventor	Norman C. Fawley
		Art Unit	3679
		Examiner Name	David Bochna
Total Number of Pages in This Submission	23	Attorney Docket Number	59910P004D

ENCLOSURES (check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Response <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> PTO/SB/08 <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Basic Filing Fee <input type="checkbox"/> Declaration/POA <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): <div style="border: 1px solid black; height: 80px; width: 100%;"></div>
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Thomas M. Coester, Reg. No. 39,637 BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Signature	<i>Thomas Coester</i>
Date	December 27, 2005

CERTIFICATE OF MAILING/TRANSMISSION			
I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.			
Typed or printed name	Jean Svoboda		
Signature	<i>Jean Svoboda</i>	Date	December 27, 2005



FEE TRANSMITTAL for FY 2005

Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27.

TOTAL AMOUNT OF PAYMENT (\$)
500.00

Complete if Known

Application Number	10/820,574
Filing Date	April 7, 2004
First Named Inventor	Norman C. Fawley
Examiner Name	David Bochna
Art Unit	3679
Attorney Docket No.	59910P004D

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☐ Money Order ☐ None ☐ Other (please identify): _____

☐ Deposit Account Deposit Account Number: 02-2666 Deposit Account Name: Blakely, Sokoloff, Taylor & Zafman LLP

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee
☐ Charge any additional fee(s) or underpayment of fee(s) under 37 CFR §§ 1.16, 1.17, 1.18 and 1.20. ☐ Credit any overpayments

FEE CALCULATION

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet.	
2053	130	2053	130	Non-English specification	
1251	120	2251	60	Extension for reply within first month	
1252	450	2252	225	Extension for reply within second month	
1253	1,020	2253	510	Extension for reply within third month	
1254	1,590	2254	795	Extension for reply within fourth month	
1255	2,160	2255	1,080	Extension for reply within fifth month	
1401	500	2401	250	Notice of Appeal	
1402	500	2402	250	Filing a brief in support of an appeal	500.00
1403	1,000	2403	500	Request for oral hearing	
1451	1,510	2451	1,510	Petition to institute a public use proceeding	
1460	130	2460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
1809	790	1809	395	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR § 1.129(b))	
Other fee (specify) _____					
SUBTOTAL (2)					(500.00)

SUBMITTED BY

Complete (if applicable)

Name (Print/Type)	Thomas M. Coester	Registration No. (Attorney/Agent)	39,637	Telephone	(310) 207-3800
Signature	<i>Thomas Coester</i>	Date	12/27/05		



PATENT
Attorney's Docket No. 059910.P004D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application for:

Norman C. Fawley

Serial No.: 10/820,574

Filed: April 7, 2004

**For: SYSTEM FOR JOINING
SECTIONS OF COMPOSITE
REINFORCED LINE PIPE**

Examiner: David Bochna

Art Group: 3679

APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant (hereinafter "Appellant") submits one copy of the following Appeal Brief pursuant to 37 C.F.R. § 41.37 for consideration by the Board of Patent Appeals and Interferences. Appellant also submits herewith a check in the amount of \$500.00 to cover the cost of filing the opening brief as required by 37 C.F.R. § 41.20(b)(2). Please charge any additional amount due or credit any overpayment to deposit Account No. 02-2666.

01/04/2006 BABRAHA1 00000085 10820574

01 FC:1402

500.00 0P

TABLE OF CONTENTS

	Page
I. REAL PARTY IN INTEREST	3
II. RELATED APPEALS AND INTERFERENCES.....	3
III. STATUS OF CLAIMS	3
IV. STATUS OF AMENDMENTS.....	3
V. SUMMARY OF CLAIMED SUBJECT MATTER	3
VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL.....	5
VII. ARGUMENT	5
A. Overview of the Prior Art	5
1. Overview of Linden.....	5
2. Overview of Galloway	6
3. Overview of Ewing.....	6
B. Rejection of Claims 1 and 2 Under 35 U.S.C. §102(b) as Anticipated by Linden	6
C. Rejection of Claims 10, 11 and 12 Under 35 U.S.C. §102(b) as Anticipated by Linden.....	7
D. Rejection of Claims 3, 13 Under 35 U.S.C. §102(b) as Anticipated by Linden	9
E. Rejection of Claim 4 Under 35 U.S.C. §102(b) as Anticipated by Linden.....	9
F. Rejection of Claim 9 Under 35 U.S.C. §102(b) as Anticipated by Linden.....	10
G. Rejection of Claims 1, 5 and 7 Under 35 U.S.C. §102(b) as Anticipated by Galloway.....	10
H. Rejection of Claims 10 and 11 Under 35 U.S.C. §102(b) as Anticipated by Galloway	12
I. Rejection of Claim 4 Under 35 U.S.C. §102(b) as Anticipated by Galloway.....	12
J. Rejection of Claim 6 Under 35 U.S.C. §102(b) as Anticipated by Galloway.....	13
K. Rejection of Claim 8 Under 35 U.S.C. § 103(a) as Obvious over Galloway in view of Ewing	13
VIII. CLAIMS APPENDIX.....	16
IX. EVIDENCE APPENDIX.....	18
X. RELATED PROCEEDINGS APPENDIX.....	19

I. REAL PARTY IN INTEREST

Norman C. Fawley, the party named in the caption, assigned his rights to the invention disclosed in the subject application through an Assignment recorded on December 14, 2004, at reel and frame 016085/0130 to NCF Industries, Inc., 807-C West Main Street, Santa Maria, California, 93458. Therefore, NCF Industries, Inc. is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

The parent case U.S. Application No. 10/354,491, of which the instant case is a divisional, is currently on appeal.

III. STATUS OF CLAIMS

Claims 1-13 are pending in the application. The Examiner has rejected claims 1-13. Therefore, Appellant appeals the rejection of claims 1-13.

IV. STATUS OF AMENDMENTS

There were no amendments filed subsequent to the final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Embodiments of the Application provide for pipelines reinforced with composite wraps. Page 1, paragraph [0002].

Independent claim 1 recites the elements of a first 115 and second 125 pipe segment each having a core 130 and a composite reinforcement 140 circumferentially surrounding the core, each pipe segment further having a first end 110, 120 with a cutback region 150 in which the core 130 is exposed, the first 115 and second 125 pipe segments joined at their respective first ends 110, 120; and a joint tape 210 overlaying the cutback region 150 and adhering to the first 115 and second 125 pipe segments. Page 3, paragraphs [0013], lines 4-13, [0014], lines 14-17, [0015], lines 28-30; page 4, paragraph [0016], lines 5-8; page 6, paragraph [0019], lines 1-23; Figures 1, 2.

Independent claim 10 recites the elements of a first 115 and second 125 pipe segment each having a core 130 and a composite reinforcement 140 means

circumferentially surrounding the core 130 to provide hoop strength, each pipe segment further having a first end 110, 120 with a cutback region 150 in which the core 130 is exposed, the first 115 and second 125 segments joined at their respective first ends 110, 120 and a joint tape 210 means circumferentially overlaying the first ends 110, 120 adjacent the cutback region 150 to provide hoop strength. Page 3, paragraphs [0013], lines 4-13, [0014], lines 14-17, [0015], lines 28-30; page 4, paragraph [0016], lines 5-8; page 6, paragraph [0019], lines 1-23; Figures 1, 2. The composite reinforcement 140 may be made with, for example, an isopolyester resin matrix with E-glass fibers or similar alternatives to E-glass. Page 4, paragraph [0015], lines 5-34. Still further, the composite reinforcement 140 may have fibers running substantially in the circumferential direction with relatively few perpendicular fibers or fibers of sufficient density, number and strength when wrapped to provide desired hoop strength assistance for the core 130. Page 5, paragraph [0017], lines 1-8. The composite joint tape 210 is cured to provide hoop reinforcement to the first and second pipe segments 115, 125 at the cut-back portions 150. Page 4, paragraph [0016], 5-34; page 6, paragraph [0019], lines 1-23, [0020]; page 7, paragraphs [0020]-[0021]; Figure 3. The joint tape 210 may be manufactured from a warp and weft woven joint tape with several warp fibers removed from each side of joint tape 210 to provide joint tape tails 215 to be used to facilitate filling in wedge portions 600 created from the cut back of resin reinforcement 170 and composite reinforcement 140. Page 6, paragraphs [0019],[0020]. The core 130 may be made of any metal, metal alloy or elastic metal composite. Page 3, paragraph [0014], lines 14-27. Still further, examples of metal may include, but are not limited to, aluminum, steel, stainless steel, carbon steel, monel, inconel, hatelloy and titanium. Page 3, paragraph [0014], lines 14-27.

Independent claim 12 recites the elements of a first 115 and second 125 pipe segment each having a metallic core 130 and a composite reinforcement 140 circumferentially overlaying the metallic core 130, each pipe segment further having a first end 110, 120 with a cutback region 150 in which the metallic core 130 is exposed, the first 115 and second 125 segments joined at their respective first ends 110, 120; and a joint tape 210 circumferentially overlaying the first 115 and second 125 pipe segments at the cutback region 150 to provide hoop reinforcement. Page 3, paragraphs [0013], [0014]; page 4, paragraphs [0015], [0016]; page 6, paragraph [0019]; Figures 1, 2.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The issues involved in this Appeal are as follows:

- A. Whether claims 1-3 and 9-13 are unpatentable under U.S.C. §102(b) as anticipated by U.S. Patent No. 4,732,412 issued to Van der Linden et al. ("Linden").
- B. Whether claims 1, 4-7 and 10-11 are unpatentable under U.S.C. §102(b) as anticipated by U.S. Patent No. 3,053,724 issued to Galloway ("Galloway").
- C. Whether claim 8 is unpatentable under 35 U.S.C. §103(a) as obvious over Galloway in view of U.S. Patent No. 4,023,834 issued to Ewing et. al. ("Ewing").

All of the claims do not stand or fall together. The basis for the separate patentability of the claims is set forth below.

VII. ARGUMENT

A. Overview of the Prior Art

1. Overview of Linden

Linden teaches a recoverable polymeric sheet material coated with regions of a sealant and a heat-activated adhesive. See Linden, Abstract. Linden teaches pipe having a jacket in which a certain amount is removed to prevent it from being damaged by the heat required for welding. See Linden, column 7, lines 40-45. The region of the bare pipe between the jackets is protected by the sleeve (i.e. polymeric material) of the invention. See Linden, column 7, lines 44-46. Linden teaches the sealant (sleeve) ensures a flexible water-proof seal around the weld. See Linden, Abstract.

Linden does not teach first and second pipe segments having a core and a composite reinforcement circumferentially surrounding the core. Linden does not teach a joint tape to provide improved hoop strength. Linden does not teach a resin saturated reinforcement tape. Linden does not teach a resin reinforcement tape comprised of warp-dominated fiber material and further fails to teach a line of hot melt running a warped direction.

2. Overview of Galloway

Galloway teaches a method of splicing sections of heavy duty discharge hose. See Galloway, column 1, lines 14-20. Galloway teaches the flexible hose is manufactured from an inner rubber or comparable tube with a plurality of plies of rubber impregnated fabric wound spirally around the inner tube. See Galloway, column 2, lines 27-35. Galloway further teaches the spliced hose sections may be used to connect adjacent pipes. See Galloway, col. 4, lines 22-25.

Galloway does not teach first and second pipe segments having a core and a composite reinforcement circumferentially surrounding the core. Galloway does not teach a resin saturated reinforcement tape. Galloway does not teach a resin reinforcement tape comprised of warp-dominated fiber material.

3. Overview of Ewing

Ewing teaches a push-type pipe coupling and conduit pipe assembly. See Ewing, Abstract. Ewing teaches a pipe coupling is connected with a pipe section to form a pipe/coupling combination. See Ewing, column 4, lines 55-60.

Ewing does not teach joined first and second pipe segments having a core and a composite reinforcement circumferentially surrounding the core.

B. Rejection of Claims 1 and 2 Under 35 U.S.C. §102(b) as Anticipated by Linden

The Examiner rejects Claims 1-4 and 9-13 under 35 U.S.C. §102 as being anticipated by Linden. Appellant respectfully traverses the rejection for at least the reasons set forth below.

It is axiomatic that to anticipate a claim every element of the claim must be disclosed within a single reference. In regard to Claim 1, Appellant respectfully submits that Linden fails to disclose first and second pipe segments having a core and a composite reinforcement circumferentially surrounding the core. The Examiner asserts that asbestos cement jacket 5 constitutes the composite reinforcement. See Final Action, page 2. One of ordinary skill in the art would not understand asbestos cement to provide any increase in hoop strength or reinforcement to an underlying pipe. One of ordinary skill in the art would know that asbestos cement is an inherently brittle material, susceptible to cracking and has a low impact resistance. As evidenced by

Linden, asbestos cement is used commercially as a barrier against water and corrosion, not a composite reinforcement to an underlying pipe as required by the instant claims. Thus, neither Linden nor the knowledge of the skilled artisan may be relied upon to teach at least this element.

Appellant respectfully submits for at least these reasons, Claim 1 and its dependent claims are separately patentable over Linden. In view of the foregoing, Appellant respectfully requests the rejection of Claims 1 and 2 under 35 U.S.C. §102 be overturned.

C. Rejection of Claims 10, 11 and 12 Under 35 U.S.C. §102(b) as Anticipated by Linden

Claims 10 and 12 recite the elements of first and second pipe segments having a core and a composite reinforcement circumferentially surrounding the core as recited in Claim 1 and further provide an explicit claim to the improvement and hoop strength created by a joint tape. As an additional matter, Claim 10 is written in means plus function language. Thus, the broadest reasonable interpretation for composite reinforcement means and joint tape means are consistent with those structures described in the Specification. Such structures include, the composite reinforcement made with, for example, an isopolyester resin matrix with E-glass fibers or similar alternatives to E-glass. See Application, page 4, paragraph [0015], lines 5-34. Still further, the composite reinforcement 140 may have fibers running substantially in the circumferential direction with relatively few perpendicular fibers or fibers of sufficient density, number and strength when wrapped to provide desired hoop strength assistance for the core 130. See Application, page 5, paragraph [0017], lines 1-8. The joint tape may be manufactured of a 80/20 warp and weft woven joint tape with similar fibers to the composite reinforcement. See Application, page 6, paragraph [0020], lines 24-34. Nothing in Linden remotely discloses structures analogous to that as described in Appellant's specification. Thus, Claim 10 which is governed by U.S.C. §112, paragraph 6 cannot be anticipated by Linden as a matter of law.

Moreover, Claims 10 and 12 recite a joint tape overlaying the joined ends of the pipe segment to provide hoop strength and reinforcement. There is no evidence whatsoever that the sleeve system 1 of Linden provides increased hoop strength at the

joint as alleged by the Examiner. Linden teaches the purpose of the invention and its components (i.e., jacket 5) are to provide a barrier against corrosion and water ingress. See Linden, col. 1, lines 10-15. Jacket 5 suitable for protecting against corrosion and moisture would thus not necessarily provide any sort of hoop strength or reinforcement to the underlying core.

The Examiner recognizes Linden fails to expressly teach hoop reinforcement and instead states this limitation is met because it is an intended use that does not result in a structural difference from the prior art and further that element 1 inherently provides some hoop reinforcement. See Final Action, page 5. Appellant respectfully submits the Examiner is mistaken on both conclusions.

The structure of a material is determinative of whether the material will provide hoop reinforcement when applied to a pipe. Mere circumferential attachment of a sheet material 1 to the perimeters of first and second pipe segments, as stated by the Examiner, does not necessarily result in a material capable of providing hoop reinforcement. As evidenced by Appellant's specification, hoop strength may be reinforced where the overlying material has fibers running substantially in the circumferential direction with relatively few perpendicular fibers or where the fibers are of a particular density, number and strength. See Application, page 5, paragraph [0017]. Nowhere does Linden indicate the sheet material 1 has such features. Instead, Linden teaches element 1 is a polymeric material of a sleeve. See Linden, Col. 8, lines 21-23. The only requirement of the sheet is that it is capable of protecting the exposed pipe from the heat required for welding. See Linden, Col. 7, lines 41-46. Thus, there is no teaching in Linden that the polymeric material 1 of the sleeve possesses a structure capable of providing hoop strength or reinforcement to pipe segments. Moreover, material 1 would not necessarily provide hoop strength since Linden does not require such a quality and the Examiner has not shown that circumferential attachment alone would necessarily provide hoop strength to an underlying pipe. Thus, Linden further fails to teach or suggest at least this element as recited in Claims 10 and 12.

For the foregoing reasons, the Examiner has failed to establish that Linden teaches each element of Claims 10 and 12. Accordingly, Appellant respectfully submits Claim 10 and its dependent claims and Claim 12 are separately patentable

over Linden. In view of the foregoing, Appellant respectfully requests the rejection of Claims 10, 11 and 12 under 35 U.S.C. §102 be overturned.

D. Rejection of Claims 3, 13 Under 35 U.S.C. §102(b) as Anticipated by Linden

In regard to Claims 3 and 13, Claim 3 depends from independent Claim 1 and Claim 13 depends from independent Claim 12 and incorporate the limitations thereof. Thus, at least for the reasons mentioned in regard to Claims 1 and 12, Claims 3 and 13 are patentable over Linden.

In addition, Claims 3 and 13 are separately patentable over Linden because these claims teach the additional element of a primer coated on the first ends of the cut-back portion to bind the joint tape (Claim 3) and the composite (Claim 13) to the first ends. The Examiner makes the bald assertion that a primer coat is taught by Linden however fails to point to any such teaching and Appellant has been unable to discern such teaching within the reference.

Thus, for these additional reasons, the Examiner has failed to establish anticipation of Claims 3 and 13 based on Linden. Accordingly, Claims 3 and 13 are separately patentable over Linden. Appellant respectfully requests the rejection of Claims 3 and 13 under 35 U.S.C. §102 be overturned.

E. Rejection of Claim 4 Under 35 U.S.C. §102(b) as Anticipated by Linden

In regard to Claim 4, this claim depends from independent Claim 1 and incorporates the limitations thereof. Thus, at least for the reasons mentioned in regard to Claim 1, Claim 4 is patentable over Linden.

In addition, Claim 4 is separately patentable over Linden because it teaches the additional element of a resin saturated reinforcement tape extending circumferentially around the cutback region. The Examiner alleges that a tape that is made of a resin material is necessarily saturated with a resin material. See Final Action, page 3. Appellant respectfully submits the Examiner's conclusion is erroneous as a matter of law. By way of example, a tape may be made entirely of resin. However, the plain meaning of the term saturate requires at least one additional material that is not the resin otherwise it is not possible for there to be saturation. Additionally, the resin may be an impermeable backing, which would

also not permit saturation. Appellant refers the Board to any standard dictionary which will provide a definition such as, to fill completely with something that permeates or pervades. It would be nonsensical to suggest a resin saturated by itself.

Thus, for these additional reasons, the Examiner has failed to establish anticipation of Claim 4 based on Linden. Accordingly, Claim 4 is separately patentable over Linden. Appellant respectfully requests the rejection of Claim 4 under 35 U.S.C. §102 be overturned.

F. Rejection of Claim 9 Under 35 U.S.C. §102(b) as Anticipated by Linden

In regard to Claim 9, this claim depends from independent Claim 1 and incorporates the limitations thereof. Thus, at least for the reasons mentioned in regard to Claim 1, Claim 9 is separately patentable over Linden.

In addition, Claim 9 is separately patentable over Linden because it teaches the additional element of at least one line of hot melt running a warped direction to stabilize the plurality of weft fibers. The Examiner alleges the reference teaches one line of hot melt running a warped direction. See Final Action, page 3. While Appellant does not agree with this characterization, the Examiner has not even pointed to a portion of the reference in support of this assertion. The Examiner appears to ignore the modifying clause of Claim 9 requiring that the hot melt stabilize the plurality of weft fibers. Thus, for at least these additional reasons, the Examiner has failed to establish anticipation of Claim 9 based on Linden. Accordingly, Claim 9 is separately patentable over Linden. Appellant respectfully requests the rejection of Claim 9 under 35 U.S.C. §102 be overturned.

G. Rejection of Claims 1, 5 and 7 Under 35 U.S.C. §102(b) as Anticipated by Galloway

In regard to Claim 1, Appellant respectfully submits that Galloway fails to teach at least the elements of joined first and second pipe segment each having a core and a composite reinforcement circumferentially surrounding the core.

Galloway teaches a method of splicing sections of a heavy-duty discharge hose. Galloway teaches that the hose is comprised of an inner rubber or comparable tube with a plurality of plies of rubber impregnated fabric wound spirally around the inner

tube. See Galloway, Col. 2, lines 27-35. The Examiner alleges elements 2 and 2' teach first and second pipe segments, respectively, and 4, 4' teach a composite reinforcing circumferentially surrounding the core of each segment. See Final Action, page 3, paragraph 7.

Appellant respectfully disagrees with the Examiner's characterization of Galloway and submits the teachings of Galloway prevent the Examiner's conclusion that the "flexible hose" of Galloway teaches Appellant's claimed "pipe." The Examiner relies entirely on the definition of "pipe" found in Webster's dictionary to support his conclusion that a "flexible hose" is a "pipe." See Final Action, page 5. Such reliance is inappropriate where the reference itself consistently uses the term "pipe" to mean something else. In particular, Galloway expressly teaches that elements 26, 28 are "pipes." See Galloway, col. 4, lines 12-16; Figure 1. Galloway further teaches that "pipes" 26, 28 are connected with "flexible hoses." See Galloway, col. 4, lines 22-25. As illustrated by Figure 1 and taught by the specification, pipes 26, 28 are functionally and structurally different from the flexible hose sections 2, 2'. Thus, construing "flexible hose" to mean a "pipe" as suggested by the Examiner is inconsistent with the manner in which the terms are used in Galloway and would render the teachings of Galloway nonsensical and redundant. It is well settled that the manner in which terms are consistently used throughout the specification must prevail over an inconsistent alternative meaning therefore the Examiner's reading must fail. *Interactive Gift Express, Inc. v. Compuserve, Inc.*, 256 F.3d 1323, 1335 (Fed. Cir. 2001). Accordingly, the Examiner has not shown, and Appellant has been unable to discern, any portion of Galloway teaching a first and second pipe segment having a core and composite reinforcement.

In addition, Claim 1 requires that the ends of the pipe segments be joined together. There is no teaching or suggestion in Galloway that the segments of Galloway are joined (e.g., welded together). Instead, the segments are retained in adjacent relation while overlaid with various layers of additional material. Since Galloway fails to teach each element of Claim 1, anticipation may not be found.

Appellant respectfully submits for at least these reasons, Claim 1 and its dependent claims are separately patentable over Galloway. In view of the foregoing, Appellant respectfully requests the rejection of Claims 1, 5 and 7 under 35 U.S.C. §102 be overturned.

H. Rejection of Claims 10 and 11 Under 35 U.S.C. §102(b) as Anticipated by Galloway

In regard to independent Claim 10 and dependent Claim 11, Appellant respectfully submits similar to Claim 1, these claims include the element of joined first and second pipe segment each having a core and a composite reinforcement circumferentially surrounding the core. Thus, at least for the reasons discussed in regard to Claim 1 these claims are patentable over Galloway.

In addition, Claims 10 and 11 are written in means plus functional language and therefore governed by 35 U.S.C. §112, paragraph 6. Thus, the Examiner is obligated to find structures analogous to those disclosed within the specification in the effort to anticipate Claims 10 and 11. Galloway does not provide such structures.

Appellant respectfully submits for at least these reasons, Claims 10 and 11 are separately patentable over Galloway. In view of the foregoing, Appellant respectfully requests the rejection of Claims 10 and 11 under 35 U.S.C. §102 be overturned.

I. Rejection of Claim 4 Under 35 U.S.C. §102(b) as Anticipated by Galloway

In regard to Claims 4, this claim depends from independent Claim 1 and incorporates the limitations thereof. Thus, at least for the reasons mentioned in regard to Claim 1, Claim 4 is separately patentable over Galloway.

In addition, Claim 4 is separately patentable over Galloway because it teaches the additional element of a resin saturated reinforcement tape extending circumferentially around the cutback region. The Examiner alleges a rubber impregnated tire cord fabric in Galloway teaches this element. See Final Action, page 3. Appellant respectfully disagrees with the Examiner's characterization. A rubber is not a resin as the term is conventionally understood. Moreover, there is no indication that the impregnated rubber "saturated" the reinforcement tape. Thus, at least for these additional reasons, the Examiner has failed to establish anticipation of Claim 4 based on Galloway. Accordingly, Claim 4 is separately patentable over Galloway. Appellant respectfully requests the rejection of Claim 4 under 35 U.S.C. §102 be overturned.

J. Rejection of Claim 6 Under 35 U.S.C. §102(b) as Anticipated by Galloway

In regard to Claims 6, this claim depends from independent Claim 1 and incorporates the limitations thereof. Thus, at least for the reasons mentioned in regard to Claim 1, Claim 6 is patentable over Galloway.

In addition, Claim 6 is separately patentable over Galloway because it recites the additional element of a resin reinforcement tape comprised of a warp-dominated fiber material. The Examiner alleges this element is taught in Col. 3, lines 45-52 of Galloway. Appellant has reviewed the portion of Galloway relied upon by the Examiner and has been unable to discern any teaching of a resin reinforcement tape made of a “warp-dominated” fiber material as recited in Claim 6. Instead, Col. 3, lines 45-53 of Galloway merely discusses that the cord fabric 15, which is similar to 14 (rubber impregnated tire cord tape), has warp yarns extending at a like angle to the mandrel axis. There is no teaching or suggestion in Galloway that the warp yarns dominate the fiber material. Accordingly, for at least the reasons set forth above, Galloway does not teach or suggest all the elements of Claim 6. Since Galloway fails to teach or suggest each element of Claims 6, anticipation may not be found.

Thus, at least for these additional reasons, the Examiner has failed to establish anticipation of Claim 6 based on Galloway. Accordingly, Claim 6 is separately patentable over Galloway. Appellant respectfully requests the rejection of Claim 6 under 35 U.S.C. §102 be overturned.

K. Rejection of Claim 8 Under 35 U.S.C. § 103(a) as Obvious over Galloway in view of Ewing

In regard to Claims 8, this claim depends from independent Claim 1 and incorporates the limitations thereof. Thus, at least for the reasons mentioned in regard to Claim 1, the Examiner has failed to establish, Galloway teaches at least the elements of joined first and second pipe segments having a core and a composite reinforcement circumferentially surrounding the core as found in Claim 8. The Examiner has further not shown Ewing cures the deficiencies of Galloway with respect to these elements. Thus, for the reason that Galloway and Ewing fail to teach or suggest at least these elements of Claim 8, Claim 8 is separately patentable over the references.

In addition, Claim 8 is separately patentable on the basis that the Examiner has improperly combined Galloway and Ewing. The Examiner alleges it would have been obvious to a person having ordinary skill in the art at the time the invention was made to substitute the nylon fibers of Galloway with glass fibers because they are equivalents. Appellant respectfully submits, knowledge that materials are equivalent would not motivate one of ordinary skill in the art to substitute nylon fibers for glass fibers because there would be no recognized advantage to making the substitution. The motivation and desire to modify what is already known arises when the modification will result in some sort of desired advantage or increased performance. By the Examiner's own admission, there would be no benefit to reconstructing Galloway in view of the teachings of Ewing. Thus, it is only upon viewing Appellant's disclosure that the desirability of using an isopolyester resin and glass fibers seated in the polyester resin is recognized. Such hindsight reconstruction is not an appropriate basis for finding obviousness. Accordingly, even if it were possible to combine Galloway with Ewing to arrive at Appellant's invention, there is no motivation to do so.

Thus, for these additional reasons, the Examiner has failed to establish a *prima facie* case of obviousness for Claim 8 based on Galloway in view of Ewing. Accordingly, Claim 8 is separately patentable over Galloway in view of Ewing. Appellant respectfully requests the rejection of Claim 8 under 35 U.S.C. §103 be overturned.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Dated:

By: Thomas Coester
Thomas M. Coester, Reg. No. 39,637

12400 Wilshire Boulevard
Seventh Floor
Los Angeles, California 90025
(310) 207-3800

CERTIFICATE OF MAILING:

I hereby certify that this correspondence is being deposited as First Class Mail, with the United States Postal Service in an envelope with sufficient postage addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Virginia, VA 22313-1450 on December 27, 2005.

Jean Svoboda
Jean Svoboda

VIII. CLAIMS APPENDIX

The claims involved in this Appeal are as follows:

1. (Original) An apparatus comprising:
a first and second pipe segment each having a core and a composite reinforcement circumferentially surrounding the core, each pipe segment further having a first end with a cutback region in which the core is exposed, the first and second pipe segments joined at their respective first ends; and
a joint tape overlaying the cutback region and adhering to the first and second pipe segments.
2. (Original) The apparatus of claim 1 wherein the core is comprised of a metal.
3. (Original) The apparatus of claim 1 further comprising:
a primer coated on the cut-back portion of the first ends to bind the joint tape to the first ends.
4. (Previously Presented) The apparatus of claim 1 wherein the joint tape comprises:
a resin saturated reinforcement tape extending circumferentially around the cutback region.
5. (Original) The apparatus of claim 4, wherein the resin reinforcement tape is comprised of woven, stitched or laid fabric.
6. (Original) The apparatus of claim 4, wherein the resin reinforcement tape is comprised of a warp-dominated fiber material.
7. (Previously Presented) The apparatus of claim 4 further comprising:
a veil extending circumferentially around the reinforcement tape.
8. (Original) The apparatus of claim 1 wherein the joint tape comprises:
an isopolyester resin; and
a plurality of glass fibers seated in the polyester resin.

9. (Original) The apparatus of claim 1, wherein the joint tape is further comprised of at least one line of hot melt running in a warp direction to stabilize a plurality of weft fibers.
10. (Previously Presented) An apparatus comprising:
 - a first and second pipe segment each having a core and a composite reinforcement means circumferentially surrounding the core to provide hoop strength, each pipe segment further having a first end with a cutback region in which the core is exposed, the first and second segments joined at their respective first ends; and
 - a joint tape means circumferentially overlaying the first ends adjacent the cutback region to provide hoop strength.
11. (Original) The apparatus of claim 10 comprising:
 - means for binding the joint tape means to the first ends.
12. (Previously Presented) An apparatus comprising:
 - a first and second pipe segment each having a metallic core and a composite reinforcement circumferentially overlaying the metallic core, each pipe segment further having a first end with a cutback region in which the metallic core is exposed, the first and second segments joined at their respective first ends; and
 - a joint tape circumferentially overlaying the first and second pipe segments at the cutback region to provide hoop reinforcement.
13. (Original) The apparatus of claim 12 further comprising:
 - a primer coated on the first ends at the cut-back portion to bind the composite joint tape to the first ends.

IX. EVIDENCE APPENDIX

Not Applicable.

X. RELATED PROCEEDINGS APPENDIX

A. Appeal

1. An appeal of U.S. Patent Application No. 10/354,491 is currently pending before the Board.